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VAUGHAN *v.* LYTTON.

Jan. 22, 1920.

[101 S. E. 865.]

1. **Libel and Slander (§ 123 (7)\*)—Plaintiff's Guilt of Larceny Charged a Jury Question.**—In an action for libel by the former president of a company against its secretary and treasurer for having written that plaintiff had misappropriated funds of the company, whether plaintiff did in fact take from the mails a check of a customer payable to the company under conditions which rendered him guilty of larceny *held* for the jury, in view of the facts.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 255.]

2. **Libel and Slander (§ 44 (3)\*)—Company's Letter to Customer Relative to Former Representative Privileged.**—Manufacturing company's letter written by treasurer to customer relative to misappropriation of company's funds by its former representative, who it had cause to believe was misrepresenting continuance of his connection with it, in furtherance of his own business, *held* privileged within the law of libel.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 271.]

3. **Libel and Slander (§ 112 (1)\*)—Evidence Sustaining Finding That Privilege Was Abused by Letter.**—In action by former president of a company against its secretary and treasurer for libel for having charged in a letter to a customer that plaintiff had misappropriated the company's funds, evidence *held* to justify finding privilege under which letter was written was abused by defendant; language indicating malice.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 274.]

4. **Trial (§ 267 (3)\*)—Modification of Instruction on Truth as Defense Not Error.**—In an action for libel against the secretary and treasurer of the company of which plaintiff was the former president, modification of instruction that, if the jury believed the alleged libelous statements were substantially true, they must find for defendant, by inserting "in the ordinary and usually accepted meaning thereof," after the words "substantially true," *held* not erroneous.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 296.]

5. **Appeal and Error (§ 882 (12)\*)—Modification of Instruction in Action for Libel Invited by Appellant. Cannot Be Complained of.**—In action for libel against secretary and treasurer of company of which plaintiff was former president, where court had given at defendant's request instruction that jury were to deal libelous words "in their usual meaning and ordinary signification," modification o.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

instruction that, if jury believed statements were substantially true, they must find for defendant, by inserting "in the ordinary and usually accepted meaning thereof," after the words "substantially true," held harmless to defendant.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 583.]

**6. Trial (§ 267 (3)\*)—Modification of Instruction to Eliminate Statement Which Is Repetition or Erroneous Proper.**—In action for libel against secretary and treasurer of company of which plaintiff was former president, modification of instruction that an officer and stockholder of a corporation has no right to personally indorse a check drawn by a debtor of and payable to the corporation, and to use or apply the proceeds to payment of a disputed claim which he holds or makes against the corporation, and that such action unauthorized is a misappropriation of funds, by striking out the clause to the effect that such action unauthorized is a misappropriation, held not erroneous; stricken language being either repetition or improper as taking a question from the jury.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 600.]

**7. Trial (§ 243\*)—Instruction on Privilege in Libel Action Construed as Not Nullifying Prior Instruction.**—In an action for libel, instruction that, even if the letter was written and published in good faith, it was not privileged, and defendant was not protected, if it went beyond the occasion or exigency, and was unnecessarily defamatory of plaintiff, held not erroneous as nullifying a prior instruction that the letter was privileged.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 600.]

Error to Corporation Court of Danville.

Action by J. W. Lytton against C. C. Vaughan, Jr. To review judgment for plaintiff, defendant brings error. Affirmed.

*Buford & Peterson*, of Lawrenceville, for plaintiff in error.

*Eugene Withers*, of Danville, and *N. T. Green*, of Norfolk, for defendant in error.

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ZIRKLE v. ALLISON.

Jan. 22, 1920.

[101 S. E. 869.]

**1. Logs and Logging (§ 14)\*—No Passing of Title of Timber unless Removed within Time Specified.**—Under timber contracts requiring timber to be cut and removed by specified date, the title to timber does not pass out of grantor until grantee cuts and removes

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.